

EXHIBIT 4

From: Hoory Eli
Sent: Tuesday, March 04, 2014 5:06 PM
To: Porter Sharon R; Maruca Samuel M
Cc: Arellano Sergio E; Tuey Tim; Vidano Thomas A
Subject: TIME SENSTIVE - OE Funding Request - Legal Expert
Attachments: 1. LB&I Outside Expert Funding Request Worksheet 3.4.2014 (L4-L120-E2-X06-000).docx; Req., No. L4-L120-E2-X06-00 - Supporting Documents.zip
Importance: High

Sharon and Sam,

As anticipated, please find attached the funding worksheet and accompanying package for the expert outside legal counsel request (the total funding request, as expected, is for \$2,185,500). In addition to the worksheet for your review/e-signature, also attached in the zip file are supporting documents, including: the draft SOW (no material changes to prior version), the concurring counsel memorandum, cost estimate, draft JOFOC, and market research survey.

Please check the appropriate boxes on the form, convert the word document to a pdf, and e -sign/save the PDF and return it to me. If at all possible, please send the signed form to me by c.o.b. tomorrow (Wednesday, March 5). If this is not possible, please respond no later than March 6. Of course, if you have any questions, please do not hesitate to contact me (please use email or call my cell phone at 202.263.9621 as I will be travelling the remainder this week). The OE Budget Committee will be considering the request Monday morning.

Thanks,

Eli

Eli Hoory
Transfer Pricing Operations
Large Business & International Division
Internal Revenue Service
eli.hoory@irs.gov
(202) 515-4315

INSTRUCTIONS

1. Regardless of cost, this worksheet must be prepared and sent to LB&I's Outside Expert Program Analyst for all requests for LB&I funding for outside expert services. LB&I can not fund outside expert contracts for other Business Operating Divisions, e.g., SBSE, TEGE.
2. Regardless of cost, Contracting Officer's Representatives (CORs) must be assigned to all LB&I outside expert contracts as soon as the need for outside expert services is identified. The CORs can guide and assist the examination team throughout the procurement process.
3. Generally, the Field Specialists Engineers will provide COR services on domestic issues where Economists have no primary examination responsibilities, and Economist CORs will provide support on International issues and domestic issues where the Economists have a primary examination responsibility.
4. This worksheet should be filled out while in its Microsoft Word format.
5. Documentation of Concurrences / Approvals
 - Documentation may be provided via secure e-mail or via digital signatures on this worksheet.
 - **All documentation via secure e-mail should be copied into a single document prior to forwarding to the LB&I Outside Expert Program Analyst.**
 - Digital signatures on this worksheet may be used as documentation of concurrences / approvals. After filling out this worksheet, digital signatures may be inserted by converting it to an Adobe PDF format and then inserting digital signature fields / boxes by using the Adobe PDF "Digital Signature Tool".
 - **The digital signature fields should be inserted and sized in the Adobe PDF document prior to routing for signatures.**

Converting to an Adobe PDF file:

- ➔ Either click on "File / Print / (Printer) Name = Adobe PDF / OK"
or
- ➔ On the Microsoft Word top menu line, click on "Adobe PDF / Convert to Adobe PDF"

Adding Signature Boxes, Checkboxes, etc. To the Adobe PDF file:

- ➔ Either click on "Tools / Forms / Digital Signature Tool" to add "Signature Boxes"
or
- ➔ Click on Adobe PDF "Digital Signature Tool" on the "Forms Toolbar".

If the Adobe "Forms Toolbar" (which includes the "Digital Signature Tool", "Checkbox Tool", etc.) does not show at the top of your screen after converting to an Adobe .pdf file, click on "View / Toolbars / Forms" to display the "Forms Toolbar".

- ➔ ALSO, after converting to an Adobe .pdf format, Adobe .pdf "Checkboxes" can be inserted on top of any Microsoft Word document "Checkboxes" to facilitate "Checking" after the document is converted to an Adobe .pdf format.
- ➔ After adding Adobe "digital signature boxes", Adobe "checkboxes", etc., click on the "Hand Tool" to allow digital signing, checking boxes and navigating up or down in the PDF document. **Be sure to save the document.**

NOTE: As a Microsoft Word document, this worksheet must be in a "Protected" format for the data fields to allow input. This worksheet is provided as a template in a "Protected" format without password protection, thus clicking on "Tools / Unprotect Document" and "Tools / Protect Document" are accessible commands.

LB&I Outside Expert Funding Request Worksheet (v. 01/04/13-xnqcb)

1. TAXPAYER IDENTIFICATION AND AUDIT PLAN INFORMATION

Taxpayer Name: Microsoft Corporation TIN: 91-1144442		Tax years: (YYYYMM) 200406-200606	City and State: Redmond, WA
Status 12 Date: 2007-01-14	Exam Estimated Completion Date Current ECD: 2014-12-31 Can be extended? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Statute Date: 2014-12-31 Can be extended? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	CIC Case <input checked="" type="checkbox"/> IC Case <input type="checkbox"/>

2. ISSUE DESCRIPTION

Issue Uniform Issue Code (UIL): 00482.11-10

Brief Issue Description Using "Key Words": Cost Sharing Buy-in Arrangement and Transfer Price

Detailed Issue Description: The taxpayer used a Residual Profit Split Method (RPSM) to determine the amount of the buy-in payment made by a foreign affiliate to compensate the taxpayer for certain technology intangibles (primarily software code) transferred as part of a cost sharing arrangement. Taxpayer also used its RPSM analysis to establish a transfer price to share revenues that are collected, after the acquisition of the technology intangibles by the foreign affiliate, on the sale of the related software products to third -parties.

Exam has proposed

(b)(5) DP; (b)(7)(A)

3. OUTSIDE EXPERT REQUEST – EXAMINATION TEAM INFORMATION

Team Member	Office Telephone
N/A, Industry DFO (If a Domestic Issue)	(630) - 493-5931
Sharon Porter, International DFO (If an IE Issue)	
Nancy Bronson, International Transfer Pricing Territory Manager (If a Sec. 482 issue)	(415) - 837-6295
Eli Hoory, Specialist Point of Contact (POC) - Specialist Area: Transfer Pricing	(202) - 515-4315
Ewan Purkiss, Counsel Assigned To The Project	(510) - 637-2774
Tim Tuey, COR	(415) - 837-6475
Ronald Ceruti, COR's Team Manager	(415) - 837-6575

4. REQUEST INFORMATION

Industry: CTM (i.e., CTM, F, GHW, HMP, NRC or RFPT))	Fiscal Year: FY 14 (FY##)	IPS No. (L#L120E#X##-##): L-4-L1-20-E2-X06-000
Request Date: 2014-03-04	Prior Requests Made? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Prior requests <input type="checkbox"/> Approved <input type="checkbox"/> Rejected <input type="checkbox"/> Withdrawn	

Total Estimated Cost (Including Support through Appeals): \$ 2,185,500

Is this a request for: Initial Funding of a contract or Additional Funding If this is a request for additional funding, has the "ADDITIONAL FUNDING REQUEST – LB&I OUTSIDE EXPERT SERVICES" worksheet been provided? Yes NoProvide cumulative cost for the project including this request: \$ 4.1 million

(THE FUNDING REQUEST SHOULD NOT INCLUDE COSTS FOR ANY ASPECT OF TRIAL ASSISTANCE.)

Explanation Of Source Of Cost Estimate:

Market Survey Prior Experience Other (Provide Details):

Copies of the following documents are **REQUIRED FOR ALL REQUESTS**:

- The "Requirements" portion of the statement of work.
- Independent government cost estimate
- Market survey and associated documentation
- Justification for Other Than Full and Open Competition (JOFOC) - (If non-competitive)

Are Requested Outside Expert Services Related To Multiple Cases/Issues? Yes No

Provide explanation: Services will support both the buy-in issue and related transfer price issue , and will also support both the 200406-200606 examination cycle and the new 200706 -200906 examination cycle to the extent that the issues overlap and the transfer pricing issue is relevant for both cycles (as well as for future cycles).

5. STRATEGIC AND COMPLIANCE IMPACT

Identify Affected Strategic Initiatives (Check all that apply):

<input type="checkbox"/> Issue Practice Group(IPG) Issue	<input checked="" type="checkbox"/> International Practice Network (IPN) Issue [Transfer Pricing Issue -- Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>]
<input type="checkbox"/> Abusive Tax Avoidance Transaction	<input type="checkbox"/> Pre-Filing Agreement (PFA)
<input type="checkbox"/> Fast-Track Mediation	<input type="checkbox"/> Industry Issue Resolution (IIR)
<input type="checkbox"/> CAP	<input type="checkbox"/> Other – Explain:

Compliance Impact:

Significant Impact For Taxpayer?

Yes No

Industry-Wide Impact?

Yes No

National/Cross Industry Impact?

Yes No

Explain (Industry Directives, Published Guidance, Coordinated Projects, etc.): Transfer Pricing Issue - Cost Sharing Arrangement

Is the issue owned or coordinated at a National or Industry level? If so, provide:

Name and Title of Issue Owner Executive (IOE): Samuel Maruca, Director, Transfer Pricing Operations

6. POTENTIAL IMPACT ON TAX REVENUE

6a. Estimated Potential Income Adjustment – Current Audit Years

(b)(5) DP; (b)(7)(A)

**Potential Adjustments Should Be Based On Risk Analysis
RATHER THAN "LINE ITEM" AMOUNT SHOWN ON TAX RETURN**

Please describe how the potential income adjustment was derived : Based on analysis to date of buy-in and transfer price

6b. Estimated Potential Tax Adjustment – Current Audit Years

(b)(5) DP; (b)(7)(A)

**Potential Adjustments Should Be Based On Risk Analysis
RATHER THAN "LINE ITEM" AMOUNT SHOWN ON TAX RETURN**

Please describe how the potential tax adjustment was derived: Based on analysis to date of buy-in and transfer price

6c. Are the adjustments permanent or timing adjustments?

6d. Are NOLs present? Yes No

6e. Due to Losses and NOLs, can the issue be worked in a subsequent year? Yes No

Please provide an attachment with the adjustment roll out details by year, for example:

Dollars Are In Millions	200606 (YYMM)	200706 (YYMM)	200806 (YYMM)	200906 (YYMM)	(YYMM)
Adjusted Taxable Income Before NOL					
NOL Available					
NOL Used					
Adjusted Taxable Income After NOL					(b)(5) DP; (b)(7)(A)
Tax Per Return					
Tax Per Exam					
Potential Additional Tax					
					Estimated Potential Tax Adjustment (b)(5) DP; (b)(7)(A) (Should match amount provided above – 6b)
Additional Explanation:					(b)(5) DP; (b)(7)(A)

7. TAXPAYER'S EXPERTS

Taxpayer's Position Based On:

Work Performed By Taxpayer's In-House Experts? Yes No

Work Performed By Taxpayer's Outside Experts? Yes No

Name of Taxpayer's Expert (If Available): KPMG and Baker & McKenzie

8. IRS IN-HOUSE EXPERTS

Which Specialists are assigned to assist with this issue?

- Engineer
- Economist
- Financial Products
- International
- Transfer Pricing Practice
- Other
- None

Describe 1) actions taken to identify or determine if qualified in-house Specialists are available to timely work the issue, 2) the nature and extent of in-house Specialist involvement and 3) provide an explanation why in-house expert assistance needs to be supplemented with outside expert assistance :

This outside expert services request is being coordinated with LB&I Counsel. The tax treatment turns on multiple interrelated transactions, resulting in a very complex and mutually dependant set of facts, economics and law. In addition to involving an intricate set of facts and economics (and a range of economic theories), the legal issues are not restricted to tax law. Rather, intellectual property and commercial law issues are at the center of the transaction and, in turn, require interpreting a voluminous number of interrelated contracts, supporting documentation and the parties' intentions.

The factual, economic and legal analysis is further complicated by the taxpayer's decision to subdivide its IP rights (and IP related functions) that support its products in a very novel and nuanced fashion that does not appear to have a comparison in the business world. Evaluating the relative value of the resulting pools of subdivided IP rights requires specialized industry expertise in multiple areas and, even with that expertise available, presents significant challenges.

To assist in development of the case, the Service has hired multiple experts in a wide range of areas with

complementary industry and economic experience. Because of the wide range of issues present, no one expert has the expertise to address all facets of the case. As a result, just as analyzing the case's complex set of facts, economics and law presents challenges, coordinating the work of multiple experts in an organized fashion presents its own challenges.

Given the size of the case (multi-billion), it is critical that the Service develop an understanding of the case that logically and consistently ties all the moving parts together. Just as critical, extensive coordination and expertise is also needed to present that understanding in a coherent and logical manner. In such a complex case, the importance of effective and clear presentation cannot be overstated —even if the underlying analysis is perfect, successful resolution of the case will rise or fall on whether the audience understands how all the pieces tie together.

To assist in these goals, we are proposing hiring legal experts with extensive complex litigation experience evaluating, preparing and presenting cases dealing with multifaceted facts, complex economics and multiple legal issues.

9. AUDIT EXPERIENCE WITH ISSUE

Does The Audit Team Have Prior Experience With The Subject Issue WITH THIS TAXPAYER? If "Yes", Was:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
An In-House Expert Used? Specify Types Of Experts: Economist	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
An Outside Expert Used? Specify Types Of Experts: Economist, Industry, IP Attorney	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Issue Resolved At Examination Level?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Issue Settled At Appeals Level?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Issue Forwarded For Litigation?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Do You Have Knowledge Of This Issue Being Audited Anywhere Else? If "Yes":	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Within The Same Industry?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Across Industries – National?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Worked With In-House Experts? Specify Types Of Experts: Economist	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Worked With Outside Experts? Specify Types Of Experts: Economist and industry/focused area experts	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Issue Resolved At Examination Level?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Issue Settled At Appeals Level?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Issue Forwarded For Litigation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

10. COUNSEL ISSUE SUPPORT – (Optional If Cost Is Under \$75,000)

Is a recommendation from Counsel attached?	
Does Area Counsel support the legal foundation for the issue? Does Counsel provide an explanation?	
Does Area Counsel perceive the subject issue as having significant litigation potential? Does Counsel provide an explanation?	
Is the subject issue docketed for trial (With any taxpayer)? If "Yes", does Counsel provide details?	(b)(5) DP A/C
Is there a history of litigation for this issue? If "Yes", does Counsel provide details?	
Is LB&I HQ Counsel heavily involved in the examination of the subject issue? If "Yes", Exam Team To Provide An Explanation: This issue is being coordinated with TPP and LB&I HQ Counsel.	

11. TECHNICAL SPECIALIST SUPPORT – (Optional If Cost Is Under \$75,000)

Does the Technical Specialist Recommend Using An Outside Expert? If "No": Explain: N/A (Not a technical specialist expert request. LB&I Counsel is advising, instead, due to nature of request, which is for expert legal services.) Provide Name Of Advisor: Written Recommendation Attached?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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12. AVAILABILITY OF OUTSIDE EXPERTS AND REQUISITION PROCESSING

Has A Qualified Outside Expert Been Identified? If "Yes", Provide Expert's Name: Quinn Emanuel Urquhart & Sullivan, LLP And Areas Of Expertise:	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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Commercial litigation involving complex business, economic, legal and factual issues.	
<p>Are The Identified Experts Available To Assist The Service As Stated Below?</p> <p>Planned Start Date For Expert: 2014-05-01 Can Be Extended? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Provide Explanation: Expert is being hired to prepare an assessment of the case prior to finalizing the IRS's position and while there is still an opportunity to assist in case development. In order to maximize the benefit of the expert's support, the case timeline requires that this be started as soon as possible.</p>	
<p>13. COUNSEL CONCURRENCE (Required Regardless Of Cost)</p> <p>➤ Statement of Work ➤ Selection Of Expert (Required only if sole source)</p>	
<p>Does Counsel concur with the statement -of work? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>Does Counsel concur with the selection of the recommended expert? (Sole source only) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>14. OTHER COMMENTS AND/OR JUSTIFICATIONS FOR HIRING OUTSIDE EXPERTS</p> <p>Other Comments And/Or Justifications (Provide attachments only as necessary): Fully explained above and supplemented in attached concurring memorandum from Counsel.</p> <p>At a minimum, address / explain the following:</p> <ul style="list-style-type: none"> • Why the expert is needed: Yes • The relationship between the subject issue and the expert, i.e., how the expert will fit into the examination: Yes • Other: N/A 	
<p>15. CONCURRENCES / APPROVALS</p>	
N/A (International Issue), Industry DFO	<p>Concurrence: Yes <input type="checkbox"/> No <input type="checkbox"/> Date:</p> <p style="color: blue;">(If Cost Is \$500,000+)</p> <p style="color: red;">(Domestic Issues)</p>
N/A (International Issue), Industry Director	<p>Concurrence: Yes <input type="checkbox"/> No <input type="checkbox"/> Date:</p> <p style="color: blue;">(If Cost Is \$1 Million+)</p> <p style="color: red;">(Domestic Issues)</p>
Sharon Porter, International DFO	<p>Concurrence: Yes <input type="checkbox"/> No <input type="checkbox"/> Date:</p> <p style="color: blue;">(If Cost Is \$500,000+)</p> <p style="color: red;">(International Issues)</p>
Samuel Maruca, International Director	<p>Concurrence: Yes <input type="checkbox"/> No <input type="checkbox"/> Date:</p> <p style="color: blue;">(If Cost Is \$1 Million+)</p> <p style="color: red;">(International Issues)</p>
(See attached memorandum providing concurrence), Counsel	<p>Date:</p> <p>Concurrence (Statement of Work) Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Concurrence (Expert If Sole Source) Yes <input type="checkbox"/> No <input type="checkbox"/></p>
For LB&I OE Budget Committee	<p>Date:</p> <p>Approval: Yes <input type="checkbox"/> No <input type="checkbox"/></p>

Chapter 7 – Outside Expert Requisitions
Section E - Market Research
(Required For All Requisitions)

INSTRUCTIONS

1. **REQUIRED** – At least one potential outside expert vendor who has provided no prior services to the IRS must be included in the Market Research. This is required to expand the Service’s awareness of potential providers of expert services. Justification and explanation must be provided if no potential new outside experts are contacted during the Market Research process.
2. Potential outside experts should be informed of the following requirements:
 - Registration is required on the DOD’s “Central Contractor Registration” database at (www.ccr.gov)
 - Contractors and contractor employees must comply with all applicable Treasury and Service security requirements if provided with sensitive information including:
 - Background Investigation requirements to include, but may not be limited to:
 - Filling out SF-85P, *Questionnaire for Public Trust Positions*
 - Finger prints
 - Non-Disclosure Agreements
 - Review of Federal Income Tax Compliance (See Notice 1379 – below)
 - Credit check
 - Physical and IT Security Requirements for Sensitive Information
 - Security awareness orientation/briefing
 - Annual security awareness training requirement
 - On-site security reviews will be authorized by the contract
3. Due diligence is required during the market research identification of potential outside experts. Examination teams shall seek the assistance of Area Counsel when performing market research to identify new outside experts. At a minimum, prior to Procurement’s sending out formal solicitations for outside expert services, the examination team shall perform the following actions related to all solicited outside experts:
 - Check and verify all items on the expert’s resume, including references,
 - Search the Internet for all material on the expert,
 - Research all cases in which the expert testified to determine if courts looked favorably on the expert,
 - Interview the expert – Be sure to inquire about potential conflicts of interest and if there is anything in the expert’s past that could be problem,
 - Check with the Office of Chief Counsel Librarians to see if they can find anything in print that the expert wrote or where others commented on the expert’s views. Area Counsel can assist with this (See a copy of Chief Counsel’s publication “*Expert Witness Sources 2007*” which can be found posted on Chief Counsel’s website at <http://counsel.web.irs.gov> under “Counsel Library Catalog/Publications & Guides/Expert Witness Guide”, and
 - Review any “Past Performance” reports maintained by AWSS Procurement on the expert.
4. FAR 2.101 defines “Market Research” as “. . . collecting and analyzing information about capabilities within the market to satisfy agency needs.”

Chapter 7 – Outside Expert Requisitions
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5. Outside expert services are considered to be “commercial items” as defined by FAR 2.101. (NOTE: “Services” are specifically described in FAR 2.101 as being “commercial items” if they are “. . . of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed . . .”)
6. FAR 10.002(b)(1)(C)(ii) states that market research (related to “commercial items”) should include determination of “Customary practices regarding customizing, modifying or tailoring of items to meet customer needs and associated costs; . . .”)
7. Information gathered through Market Research is a primary source for input into the “Independent Government Cost Estimate”.
8. FAR 10.001(b) states “When conducting market research, agencies should not request potential sources to submit more than the minimum information necessary.”
9. Do not give potential vendors a copy of the draft statement of work or specification.
10. FAR 10.002(e) states “Agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition.” The COTR and another IRS employee should work as a team when performing a market survey that is related to a formal procurement if direct contacts are made with potential experts, either by telephone or in person. The COTR and IRS Counsel assigned to the audit is a preferred team.
11. Use and document “investigative disclosure” procedures to avoid unauthorized disclosures of tax return information. You are authorized to disclose taxpayer information as necessary to obtain valid or critical information that is needed to complete the “Market Research”. Contact your Disclosure Officer for guidance if you have concerns or questions about investigative disclosures.
12. Procurement has a record of vendors hired by the Service and their hourly rates going back several years. You can use this information as one source for “Market Research” information. Contact your Regional AWSS Procurement Office for access to this information.
13. You should not disclose any taxpayer information to potential vendors during the Market Research [pre-contract contacts] process without first obtaining a “certification of non-disclosure” statement from the potential vendor. [See Chapter 8 - (All Requisitions) - Section F - Pre-award Disclosure Statement]
14. See AWSS Procurement’s website or contact your servicing Procurement office for additional information.

Chapter 7 – Outside Expert Requisitions
Section E - Market Research
(Required For All Requisitions)

See Below for Copy of Notice 1379 – Tax Record Check Notice

----- DATA INPUT BELOW -----

1. USE THE "TAB KEY" OR "MOUSE" TO MOVE FROM ONE DATA FIELD TO THE NEXT
2. DO NOT USE THE "ENTER/RETURN KEY" TO MOVE FROM/TO THE DATA FIELDS
3. "FILE/SAVE" PRIOR TO CLOSING THE FILE TO SAVE DATA INPUT

MARKET RESEARCH

The following information must be provided for at least two sources, excluding the requested expert.

REQUIREMENT: At least one potential outside expert vendor who has provided no prior services to the IRS must be included in the Market Research. This is required to expand the Service's awareness of potential providers of expert services. Provide justification and explanation if no potential new outside experts are contacted during the Market Research.

Market Research - Minimum Documentation

Person(s) Conducting Survey	Sam Maruca, Eli Hoory, Tom Vidano	
Date	June 2012 to March 2014	
Name Of Taxpayer	Microsoft Corporation	
Name Of Recommended Vendor	John Quinn and John Gordon of Quinn Emanuel Urquhart & Sullivan, LLP	
Recommended Vendor's Phone No.	(213) 443-3170 (p.o.c. Christopher Tayback)	
Has the Service previously used this expert?	No	If "Yes", Last Date Used: N/A

Instructions

1. Identify yourself as an IRS employee.
2. Inform the potential vendor that you are conducting market research to determine if the needed outside expert services are available (in the commercial marketplace).
3. Clearly inform the potential vendor that you are not soliciting outside expert services and that you are not authorized to legally bind the government in any kind of contractual arrangement for services.
5. Keep in mind that FAR 10.002(b)(1) states "The extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. Market research involves obtaining information specific to the item being acquired and should include-
 - (i) Whether the Government's needs can be met by-
 - (A) Items of a type customarily available in the commercial marketplace;
 - (B) Items of a type customarily available in the commercial marketplace with modifications; or
 - (C) Items used exclusively for governmental purposes.
 - (ii) Customary practices regarding customizing, modifying or tailoring of items to meet customer needs and associated costs.
4. FAR 10.002(e) states that "Agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition."
5. Adhere To Privacy Act "Investigative Disclosure" Procedures.

Chapter 7 – Outside Expert Requisitions
Section E - Market Research
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Source 1 – Primary Area(s) Of Expertise, College Degrees, Professional Work Experience and Professional Associations:

Mr. Quinn is described by the Los Angeles Daily Journal as a "legal titan", and by Chambers as a "known litigation genius", John B. Quinn is one of the most prominent business trial lawyers in the United States. As Chambers put it in their 2007 guide to U.S. lawyers and law firms: "'Tough guy' John Quinn is 'confident and quick' say clients. Opponents acknowledge his 'convincing courtroom demeanor' and one even named him 'literally the best I have ever faced in the past half dozen years.'" This sentiment echoed The American Lawyer's 2006 feature article, which described the Am Law 100 firm that Mr. Quinn built from scratch as "Better. Faster. Tougher. Scarier". ("The Mighty Quinn, John Quinn Is in Better Shape Than You Are. Now He Wants to Eat Your Lunch", The American Lawyer, 2006.) Or, as further summed up by his clients in Chambers —"there is no other".

He has been named "One of the World's Leading Litigation Lawyers" by Euromoney Institutional Investor; "One of California's Leading Litigators" by Chambers; "One of the Top 3 Trial Lawyers of Choice by General Counsel in California" by California Law Business; one of the "Outstanding Trial Lawyers of America," by Chambers U.S.A., in 2003 and 2004; "One of the Top 15 Litigators in California" by the Los Angeles Daily Journal ; "One of the Top 45 Lawyers Under the Age of 45 in the United States" by The American Lawyer (when he was under 45); "One of the 100 Most Influential Lawyers in California" by California Law Business, 2000, 2001 (one of 9 business litigators so named); and a "Super Lawyer" by Los Angeles Magazine. In 2003 he won the largest jury verdict awarded to individual plaintiffs (source: AP). In 2009, he was named "California Attorney of the Year" for "extraordinary achievements" in intellectual property law by The California Lawyer for his work on the highly publicized litigation for Mattel, Inc. over the "Bratz" line of dolls. In 2013, he was named one of "The 100 Most Influential Lawyers in America" by The National Law Journal. He was also named in 2013 one of The American Lawyer's "Top 50 Most Innovative Lawyers" over the past half century.

Mr. Gordon is the former United States Attorney for the Central District of California. He was an Assistant United States Attorney in Los Angeles for 18 years, where he served as a supervisor for 14 of his 18 years in the U.S. Attorney's Office. Prior to being appointed U.S. Attorney in April 2001, Mr. Gordon served as Chief of the Criminal Division of the U.S. Attorney's Office. In 2003, he was selected as Prosecutor of the Year by the Los Angeles County Bar Association, Criminal Justice Section, for his work as U.S. Attorney.

As a federal prosecutor, Mr. Gordon tried 45 defendants to verdict in more than 25 trials. He briefed almost 90 cases before the Ninth Circuit Court of Appeals and argued 25 of those appeals. As an Assistant U.S. Attorney, he won a U.S. Department of Justice Director's Award for Outstanding Service. As U.S. Attorney and Chief of the Criminal Division of the U.S. Attorney's Office in Los Angeles, Mr. Gordon supervised the investigation and prosecution of some of the most complex and significant white collar criminal cases in the country, including securities fraud, government fraud, and financial institution fraud matters. As U.S. Attorney, Mr . Gordon testified before the Senate on computer software piracy.

Since joining Quinn Emanuel in September 2002, Mr. Gordon has represented individuals and companies in civil cases involving interference with contract relations and prospective economic advantage, securities and investment fraud, loan and mortgage fraud, corporate self -governance, patent, copyright and trademark infringement, breach of contract, merger-related fraud, FDA fraud, unfair business practices, asset forfeiture, embezzlement, tax shelter violations, high-dollar marital dissolution, and breach of fiduciary duty. He has also represented individuals and companies in criminal investigations, indictments, and extraditions involving securities and investment fraud, bankruptcy fraud, tax evasion, telemarketing fraud, copyright infringement, import violations, loan and mortgage fraud, money laundering and structuring of financial transactions, embezzlement, Foreign Corrupt Practices Act and Anti-Kickback Act violations, and FDA fraud. During his 29 years of trying cases before juries and judges in federal and state courts, Mr. Gordon has not lost a trial.

Has the Service previously used this expert?	No	If "Yes", Last Date Used:	N/A
Name	John Quinn and John Gordon	Date:	Dec. 2013-March 2014
Address	Quinn Emanuel Urquhart & Sullivan, LLP 865 South Figueroa Street, 10th Floor Los Angeles, CA 90017		
Telephone Number	(213) 443-3170 (p.o.c. Christopher Tayback)		
Is The Potential Vendor Qualified To Perform The Required Type of Services?	Yes		

Chapter 7 – Outside Expert Requisitions Section E - Market Research (Required For All Requisitions)		
Is The Potential Vendor Available To Timely Perform The Required Type of Services?	Yes	
Does It Appear That Any Potential Conflicts Of Interest Might Exist?	Yes. Conflicts issues have been addressed with GLS and Treasury.	
Document "Market Prices" By Inquiring About Hourly Rates The Vendor Charges		
Hourly Rate For Basic Services	1120/1075/850/670/555/300	
Hourly Rate For Presenting Report To Taxpayer	1120/1075/850/670/555/300	
Hourly Rate For Trial Assistance	1120/1075/850/670/555/300	
Hourly Rate (Other – Explain) -	N/A	
Potential Vendor's Estimate Of Total Cost For The Required Type of Services	\$2.1855 Million	
Justification and explanation for using this expert if "Sole Source" requisition:		
This is a request for outside expert support to engage expert outside counsel to advise and consult assessment, preparation, and defense of adjustments related to buy-in and transfer pricing issues that involve a complex and multi-faceted set of facts and multiple area of law requiring expertise also in commercial and intellectual property. The expert's services are needed to complement and support the analysis being performed by multiple outside experts, including economists and industry experts. The case issue is unagreed with the taxpayer and is the case has a heightened potential for litigation given the significant dollars (tens of billions) at stake, legal issue, and the size of the company in question.		
Other Information:		
Mr. Quinn and Mr. Gordon are both seasoned, very experienced complex litigation attorneys with, with specific experience analyzing and presenting complex economic and commercial matters. Together, they offer a complimentary skill set and the ability to support the case needs at Exam and, if ever referred to litigation, in Court. Based on a market survey and experience with market rates in the private sector for highly skilled attorneys, it was determined the proposed expert's rates are reasonable compared to rates charged by attorneys of similar caliber and skill.		
Hourly Rates (Same for all phases – see above)		
Phase 1 -	Evaluation & Presentation	\$2,185,500.00
Statement as to why expert was not considered, available, or acceptable:		
N/A (Expert is recommended expert)		

Chapter 7 – Outside Expert Requisitions
Section E - Market Research
(Required For All Requisitions)

Source 2 – Primary Area(s) Of Expertise, College Degrees, Professional Work Experience and Professional Associations:

Mr. Boies has been named the Litigator of the Year by the American Lawyer; the Lawyer of the Year by the National Law Journal; the Antitrust Lawyer of the Year by the New York Bar Association; Best Lawyers in America from 1987 - 2012; the Global Commercial Litigator of the Year by Who's Who International six times. Mr. Boies served as Chief Counsel and Staff Director of the United States Senate Antitrust Subcommittee in 1978 and Chief Counsel and Staff Director of the United States Senate Judiciary Committee in 1979. Mr. Boies was counsel to the Federal Deposit Insurance Corporation, recovering \$1.2 billion from companies who sold junk bonds to failed savings and loan associations. In 1998-2000, he served as Special Trial Counsel for the United States Department of Justice in its antitrust suit against Microsoft.

Mr. Hume's main practice areas are trial and appellate litigation. He is a general litigator, with substantial expertise in a variety of areas of law, including tax law. Mr. Hume has argued and won important cases in courts throughout the country. He has also successfully managed several complex commercial cases, and has substantial trial experience, including cross-examining both fact and expert witnesses and presenting closing argument. Mr. Hume has also authored numerous Supreme Court and appellate briefs. Mr. Hume has exceptionally broad experience in a number of important areas of law. He has successfully litigated a wide array of commercial disputes, as well as cases raising cutting-edge legal issues under the First Amendment, the Takings Clause, the Foreign Sovereign Immunity Act (and head of state immunity), the Alien Tort Claims Act, the Sherman Act, the Internal Revenue Code, and the False Claims Act. Prior to joining Boies, Schiller & Flexner, Mr. Hume was a partner in the Washington, D.C. firm of Cooper & Kirk. While at Cooper & Kirk, Mr. Hume worked both on constitutional cases and on complex commercial cases, and co-authored more than half a dozen Supreme Court briefs. Representative work includes: successfully arguing a summary judgment motion and cross-examining expert witnesses on behalf of a multi-billion dollar thrift that resulted in a judgment of \$109 million against the United States; successfully arguing on behalf of the former Director of the Drug Enforcement Administration in an Alien Tort Claims Act case before the Ninth Circuit Court of Appeals; successfully arguing a summary judgment motion on behalf of the State of Florida against a constitutional challenge to Florida's felon disenfranchisement policy; working on the constitutional challenge to the McCain-Feingold statute. Mr. Hume also has substantial experience in tax law. Prior to joining Cooper & Kirk, Mr. Hume was associated from 1994 to 1997 with Ivins, Phillips & Barker, where he worked successfully on a variety of complex tax matters.

Has the Service previously used this expert?	No	If "Yes", Last Date Used:	N/A
Name	David Boies and Hamish Hume		Date: Multiple thru November 2013
Address	Boies, Schiller & Flexner LLP		
Telephone Number	(202) 274-1149 – Mr. Hume		
Is The Potential Vendor Qualified To Perform The Required Type of Services?	Yes		
Is The Potential Vendor Available To Timely Perform The Required Type of Services?	Yes		
Does It Appear That Any Potential Conflicts Of Interest Might Exist?	Yes		
Document "Market Prices" By Inquiring About Hourly Rates The Vendor Charges			
Hourly Rate For Basic Services	1200 / 1090 / 550 / 450 / 150		
Hourly Rate For Presenting Report To Taxpayer	1200 / 1090 / 550 / 450 / 150		
Hourly Rate For Trial Assistance	1200 / 1090 / 550 / 450 / 150		
Hourly Rate (Other – Explain) -	N/A		
Potential Vendor's Estimate Of Total Cost For The Required Type of Services	\$2.5 Million		
Justification and explanation for using this expert if "Sole Source" requisition:			
N/A (Not the recommended expert for the subject requisition request.)			
N/A (Not the recommended expert for the subject requisition request.)			
N/A (Not the recommended expert for the subject requisition request.)			
Phase	Initial Evaluation and Case Development and Support	\$2,497.600.00	

Chapter 7 – Outside Expert Requisitions
Section E - Market Research
(Required For All Requisitions)

Statement as to why expert was not considered, available, or acceptable:

Expert was considered and has the skills and expertise needed. However, due to an unrelated, non-tax matter adverse to Treasury, a conflict existed that required a waiver and, after inquiries, the Treasury declined to grant the waiver and therefore the expert is not able to provide the contemplated services.

Chapter 7 – Outside Expert Requisitions
Section E - Market Research
(Required For All Requisitions)

Source 3 – Primary Area(s) Of Expertise, College Degrees, Professional Work Experience and Professional Associations:

Theodore B. Olson is a partner in Gibson, Dunn & Crutcher's Washington, D.C. office. Mr. Olson was Solicitor General of the United States during the period 2001 -2004. From 1981-1984 he was Assistant Attorney General in charge of the Office of Legal Counsel in the U.S. Department of Justice. He has argued 59 cases in the Supreme Court, including the two Bush v. Gore cases arising out of the 2000 presidential election, and Citizens United v. Federal Election Commission, prevailing in over 75% of those arguments. Mr. Olson's practice is concentrated on appellate and constitutional law, federal legislation, media and commercial disputes, and assisting clients with strategies for the containment, management and resolution of major legal crises occurring at the federal/state, criminal/civil and domestic/international levels. He has handled cases at all levels of state and federal court systems throughout the United States, and in international tribunals.

Has the Service previously used this expert?	No	If "Yes", Last Date Used:	N/A
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Name	Ted Olson (Gibson, Dunn & Crutcher)	Date:	1/31/2012
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Address	1050 Connecticut Avenue, N.W. Washington, DC 20036 -5306
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Telephone Number	(202) 955-8668
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Is The Potential Vendor Qualified To Perform The Required Type of Services?	Yes
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Is The Potential Vendor Available To Timely Perform The Required Type of Services?	N/A
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Does It Appear That Any Potential Conflicts Of Interest Might Exist?	Yes
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Document "Market Prices" By Inquiring About Hourly Rates The Vendor Charges	
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Hourly Rate For Basic Services	\$1700/hr
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Hourly Rate For Presenting Report To Taxpayer	\$1700/hr
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Hourly Rate For Trial Assistance	\$1700/hr
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Hourly Rate (Other – Explain) -	N/A
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Potential Vendor's Estimate Of Total Cost For The Required Type of Services	N/A
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Justification and explanation for using this expert if "Sole Source" requisition:

N/A (Not the recommended expert for the subject requisition request.)
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Other Information:

N/A

Hourly Rates (See Above)

Phase 1 -	
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Phase 2 -	
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Phase 3 -	
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Phase 4 -	
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Phase 5 -	
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Statement as to why expert was not considered, available, or acceptable:
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Not recommended expert. Expert has the skills and expertise to perform the work but has a substantial tax practice, making expert unsuitable to represent the IRS in a tax dispute that may go to litigation on a high profile issue that could impact many of the firm's clients. Given nature of the proposed project, the ideal candidate is a complex litigation firm whose attorneys have the skills and experience to perform the services without a potential business conflict.

Chapter 7 – Outside Expert Requisitions
Section E - Market Research
(Required For All Requisitions)

Chapter 7 – Outside Expert Requisitions
Section E - Market Research
(Required For All Requisitions)

Source 4 – Primary Area(s) Of Expertise, College Degrees, Professional Work Experience and Professional Associations:

Theodore V. Wells is a partner and co-chair of the Litigation Department, Theodore V. Wells, Jr. has extensive litigation experience in white-collar criminal defense, complex civil and corporate litigation, SEC regulatory work, healthcare fraud, FCPA, AML and OFAC investigations, environmental matters and class action litigation. In 2010 The National Law Journal named Ted one of “The Decade’s Most Influential Lawyers” and over the years has repeatedly selected him as one of the 100 most influential lawyers in America, including naming Ted as the Lawyer of the Year in 2006. Ted also has been recognized as one of the outstanding jury trial lawyers in the United States by numerous publications including Chambers USA, which in 2012 recognized him as “the best trial lawyer in the country.” Chambers USA 2013 edition has named him a Star Performer in three categories: nationwide trial litigation, New York general commercial litigation and New York white-collar crime and government investigations, and Benchmark Litigation named him in similar categories. Legal 500 has recognized him as a Leading Trial Lawyer.

Has the Service previously used this expert?	No	If “Yes”, Last Date Used:	N/A
Name	Paul, Weiss, Rifkind, Wharton & Garrison LLP	Date:	Dec. 2013
Address	1285 Avenue of the Americas, New York, NY		
Telephone Number	(212) 373-3089		

Is The Potential Vendor Qualified To Perform The Required Type of Services?	Yes
Is The Potential Vendor Available To Timely Perform The Required Type of Services?	N/A
Does It Appear That Any Potential Conflicts Of Interest Might Exist?	Yes
Document “Market Prices” By Inquiring About Hourly Rates The Vendor Charges	
Hourly Rate For Basic Services	N/A
Hourly Rate For Presenting Report To Taxpayer	
Hourly Rate For Trial Assistance	
Hourly Rate (Other – Explain) -	
Potential Vendor’s Estimate Of Total Cost For The Required Type of Services	

Justification and explanation for using this expert if “Sole Source” requisition:

N/A (Not the recommended expert for the subject requisition request.)

Other Information:

N/A

Hourly Rates (**See Above**)

Phase 1 -		
Phase 2 -		
Phase 3 -		
Phase 4 -		
Phase 5 -		

Statement as to why expert was not considered, available, or acceptable:

Not recommended expert. Expert was contacted and has the skills and expertise to perform the work but the expert’s law firm has a substantial corporate and tax practice and, as a result, the firm’s management committee declined interest as it could raise conflict issues for its tax and corporate practice.

Chapter 7 – Outside Expert Requisitions
Section E - Market Research
(Required For All Requisitions)

Source 3 – Primary Area(s) Of Expertise, College Degrees, Professional Work Experience and Professional Associations:

Evan R. Chesler is Cravath's Chairman. He has broad experience in both trial and appellate courts, and has tried numerous cases in Federal and state courts all over the country. Mr. Chesler handles a wide variety of litigation, including securities, share holder derivative, intellectual property, general commercial, environmental, ERISA, contractual disputes and antitrust. His practice also includes the representation of clients in government and internal investigations. Mr. Chesler has represented companies and their management in virtually every industry including technology, pharmaceutical, manufacturing and financial services. Mr. Chesler has been recognized as a leading litigator in several practice areas by numerous professional publications, including Chambers USA, Chambers Global, The Best Lawyers in America, The American Lawyer, Benchmark Litigation, The Legal 500 and Lawdragon. He was named New York City's 2012 "Lawyer of the Year" for Bet- the- Company Litigation by The Best Lawyers in America and received Chambers USA's 2012 Award for Excellence in the Litigation: Business Trial Lawyers category.

Has the Service previously used this expert?	No	If "Yes", Last Date Used:	N/A
Name	Cravath, Swaine & Moore LLP Contact Us Disclaimer Site Map Extranet Alumni		
Address	901 New York Avenue, NW Washington, DC 20001-4413		
Telephone Number	(202) 408-4050		
Is The Potential Vendor Qualified To Perform The Required Type of Services?	Yes		
Is The Potential Vendor Available To Timely Perform The Required Type of Services?	N/A		
Does It Appear That Any Potential Conflicts Of Interest Might Exist?	Yes		
Document "Market Prices" By Inquiring About Hourly Rates The Vendor Charges			
Hourly Rate For Basic Services	\$1000/hr		
Hourly Rate For Presenting Report To Taxpayer	\$1000/hr		
Hourly Rate For Trial Assistance	\$1000/hr		
Hourly Rate (Other – Explain) -	N/A		
Potential Vendor's Estimate Of Total Cost For The Required Type of Services	N/A		
Justification and explanation for using this expert if "Sole Source" requisition:			
N/A (Not the recommended expert for the subject requisition request.)			
Other Information:			
N/A			
Hourly Rates (See Above)			
Phase 1 -			
Phase 2 -			
Phase 3 -			
Phase 4 -			
Phase 5 -			
Statement as to why expert was not considered, available, or acceptable:			
Not recommended expert. Expert was contacted and has the skill and expertise to perform the work but the law firm has a substantial corporate and practice and has not been able to clear conflicts issues with its tax practice clients, making the expert unavailable to represent the IRS in a tax dispute that may go to litigation on a high stakes tax issue.			

Chapter 7 – Outside Expert Requisitions
Section E - Market Research
(Required For All Requisitions)

Source 4 – Primary Area(s) Of Expertise, College Degrees, Professional Work Experience and Professional Associations:

Sullivan & Cromwell is widely recognized as a premier litigation firm with one of the leading litigation practices worldwide. Sullivan & Cromwell's Tax Group has a global reputation for innovative tax planning and the successful resolution of important tax controversies. Well known for its expertise in all aspects of tax practice, the group advises some of the most sophisticated corporations and individuals on their most important and most sensitive U.S., French and UK tax concerns. In tax controversies, the tax group works closely with the Litigation Group so to give the full benefit of both experienced tax lawyers and innovative litigators.

Has the Service previously used this expert?	No	If "Yes", Last Date Used:	N/A
Name	Sullivan & Cromwell	Date:	N/A
Address	901 New York Avenue, NW Washington, DC 20001-4413		
Telephone Number			
Is The Potential Vendor Qualified To Perform The Required Type of Services?		Yes	
Is The Potential Vendor Available To Timely Perform The Required Type of Services?		N/A	
Does It Appear That Any Potential Conflicts Of Interest Might Exist?		Yes	
Document "Market Prices" By Inquiring About Hourly Rates The Vendor Charges			
Hourly Rate For Basic Services		\$1200/hr	
Hourly Rate For Presenting Report To Taxpayer		\$1200/hr	
Hourly Rate For Trial Assistance		\$1200/hr	
Hourly Rate (Other – Explain) -		N/A	
Potential Vendor's Estimate Of Total Cost For The Required Type of Services		N/A	

Justification and explanation for using this expert if "Sole Source" requisition:

N/A (Not the recommended expert for the subject requisition request.)

Other Information:

N/A

Hourly Rates (**See Above**)

Phase 1 -		
Phase 2 -		
Phase 3 -		
Phase 4 -		
Phase 5 -		

Statement as to why expert was not considered, available, or acceptable:

Not recommended expert. Due to firm's significant tax practice, raising a potential conflict of interest, expert was not contacted during market survey. Rates are known from independent experience. Expert has the skills and expertise to perform the work but has a substantial tax practice, making expert unsuitable to represent the IRS in a tax dispute that may go to litigation on a high-profile issue that could impact many of the firm's clients. Given nature of the proposed project, the ideal candidate is a complex litigation firm whose attorneys had the sophistication and experience to perform the services without a business conflict.

Market Survey Summary

Expert	Let Sent	ND Rec	Conf Call	Est Rec	Phase 1	Phase 2	Phase 3	Phase 4	Phase 5	Total
					0	0	0	0	0	0
					0	0	0	0	0	0
					0	0	0	0	0	0
					0	0	0	0	0	0

(b)(5) DP

Chapter 3 - Outside Expert Requisition
Section B – Independent Government Cost Estimate
(Required For All Requisitions)

SECTION B - INDEPENDENT GOVERNMENT COST ESTIMATE

FUNDED PORTION OF REQUEST (Phase 1)

Phase 1: Evaluation and Case Support

<u>Expert</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Sub-Total</u>
John Quinn (Partner)	200	\$1,120	\$224,000.00
John Gordon (Partner)	300	\$1,075	\$322,500.00
Jeremy Andersen (Partner)	400	\$840	\$336,000.00
Noah Helpern (Associate)	700	\$670	\$469,000.00
David Pennington (Associate)	800	\$555	\$444,000.00
Carol O'Connor (Paralegal)	400	\$300	\$120,000.00
<u>Total professional fees:</u>			<u>\$ 1,915,500.00</u>
Travel			\$60,000.00
Out-of-pocket (non travel)			\$210,000.00
<u>Total out of pocket expenses</u>			<u>\$270,000.00</u>
<u>PHASE 1 TOTAL:</u>			<u>\$2,185,500.00</u>

TOTAL FUNDED PORTION = \$2,497,600.00

UNFUNDED PORTION OF REQUEST = None for LB&I Exam Request. Post-LB&I jurisdiction phases, if any, would be the subject of separate Counsel jurisdiction contract totaling approximately \$6.5 million and would be optional and unfunded.

TDF 76-01.6 (03/11)
 Prescribed by DTAP Part 1006
 (Previous Edition Obsolete)

DEPARTMENT OF THE TREASURY
JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION
(JOFOC)

I recommend that the U.S. DEPARTMENT OF THE TREASURY use other than full and open competition for the acquisition of the following supplies or services. If this acquisition is to be made with only one source or a limited number of sources, negotiations will be conducted with the indicated proposed supplier(s): **Quinn Emanuel Urquhart & Sullivan LLP**

1. DESCRIPTION OF SUPPLIES OR SERVICES

The expert's task will be to contribute to the analysis, evaluation, and defense of claims or adjustments related to the Taxpayer's transactions by providing the expertise of complex commercial litigators to assist with the Service's assessment of the Taxpayer's transfer of intangible property rights in association with a cost sharing arrangement and related transactions. The experts are highly skilled and well-respected commercial litigation attorneys, with extensive experience evaluating, preparing and presenting complex cases that touch on multiple legal issues in many areas of law and that are dependent on complex, multifaceted facts requiring extensive factual development, economic analysis and the coordination of multiple expert witness to effectively evaluate and present a case. The expert's services are needed to complement and support the Service's analysis to date and the work performed by other experts supporting the case, including economists and industry experts.

2. REQUISITION NO.

L-4-L1-20-E2-X06-000

3. COST ESTIMATE

\$2,185,500.00

4. NAME(S) OF PROPOSED SOURCE(S)

Quinn Emanuel Urquhart & Sullivan LLP
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017

Attn: Christopher Tayback (202) 274-1149 or
christayback@quinnemanuel.com

REQUESTING OFFICE CERTIFICATION

I certify that the attached justification is accurate, and contains complete data necessary to support the recommendation for other than full and open competition.

**5. REQUESTING OFFICE
 REPRESENTATIVE (Name
 & Title)**

Tim Tuey, COR

(Signature)

/s/ Tim Tuey

(Phone No.)

415-837-6475

(Date)

3/4/2013

SMALL BUSINESS CERTIFICATION

I have conducted a search of vendor files, Central Contractor Registration (CCR), and the SBA's Dynamic Small Business Search under the CCR System to locate potential offerors for this procurement. If any were found, a list is attached.

**6. SMALL BUSINESS
 SPECIALIST
 (Name and Title)**

(Signature)

(Phone No.)

(Date)

PROCUREMENT OFFICE CERTIFICATION			
<p>> This requirement [] will, [] will not, provide for a bridge contract</p> <p>I certify that this submission is accurate, and that it contains complete information necessary to enable Approving Officials to make an informed recommendation for approval or disapproval.</p>			
<p>7. ASSIGNED CONTRACTING OFFICER (Name)</p>	<p>(Signature)</p>	<p>(Phone No.)</p>	<p>(Date)</p>
<p>Before requesting this procurement, state one statutory authority for this procurement to be conducted under "other than full and open competition" procedures. Provide narrative justification associated with the respective state authority in block number 15.</p>			
THE COMPETITION IN CONTRACTING ACT OF 1984 (P.L. 98-369)			
<p>(place "X" in appropriate box)</p>			
<p>8. 41 USC 253(c)(1) – Only one responsible source; or brand name specification</p>	<p>This authority shall be used in preference to the Public Interest justification. It shall not be used when any of the other circumstances is applicable. (Explain what makes this contractor the only responsible source i.e., Does this proposed contractor have facilities or equipment that are specialized and vital to the effort? Is the proposed contractor the only one that can meet critical schedules? Does the proposed contractor have prior experience of a highly specialized nature vital to the effort? Why won't any other product or service satisfy the need? What are the unique features of the product that are unavailable in any other brand or product? Why was this particular product and/or vendor chosen? Are these features available in other models? Describe the rationale for the brand name specification. Describe the market survey and analysis efforts leading to this conclusion. In addition, for brand name, indicate that "the use of such descriptions in the acquisition is essential to the Government's requirements, thereby precluding consideration of a product manufactured by another company. ")</p>		
<p>9. 41 USC 253(c)(2) – Unusual and compelling urgency</p>	<p>This authority applies in those situations where (1) an unusual and compelling urgency precludes full and open competition, and (2) delay in award of contract would result in serious injury, financial or other, to the Government. (Explain why the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless it limited the number or sources. Solicitation from as many potential sources as is practicable under the circumstances is required.) Note: The total period of performance under this authority is limited to the minimum contract period necessary to meet the requirements and to enter into another contract through the use of competitive procedures, and may not exceed one year unless the head of the agency entering into the contract determines that exceptional circumstances apply. The determination is in addition to the approval of the justification.</p>		

10.	<p>41 USC 253(c)(3) – Industrial mobilization, engineering, developmental, or research capability; or expert services</p>
X	<p>This authority applies when it is necessary to award the contract to a particular source or sources in order (1) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization, or (2) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center, or (3) to acquire the services of an expert or neutral person for any current or anticipated litigation or dispute. (Does the proposed contractor have facilities and equipment that are vital in the event of a national emergency? Is the proposed contract to maintain properly balanced sources of supply for meeting the requirements of acquisition of programs in the interest of industrial mobilization? Is the proposed contract to create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in the United States or the United States and Canada?)</p>
11.	<p>41 USC 253(c)(4) – International agreement</p> <p>This authority may be used when the acquisition is to be reimbursed by a foreign country that requires the product to be obtained from a particular firm as specified in official written direction such as a Letter of Offer and Acceptance; or, when services are to be performed, or supplies are to be used in the sovereign territory of another country and the terms of a treaty or agreement specify or limit the sources to be solicited. (Cite the international agreement or treaty between the United States and the foreign government or international organization that precludes full and open competition. Provide the written directions of the foreign government reimbursing the agency for the cost of the acquisition, which preclude full and open competition.)</p>
12.	<p>41 USC 253(c)(5) – Authorized or required by statute</p> <p>This authority may be used when a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source or the agency's need is for a brand name commercial item for authorized resale. (Cite the authority that expressly authorizes that the acquisition be made through another agency or from a specified source, and attach a copy of the statute.) Note: While this statutory exception includes the small disadvantaged business 8(a) set-aside program, a JOFOC is not required for this type of procurement unless the amount exceeds \$20 million.</p>
13.	<p>41 USC 253(c)(6) – National Security</p> <p>This authority may be used for any acquisition when disclosure of the Government's needs would compromise national security. It will not be used merely because the acquisition is classified, or merely because access to classified matter will be necessary to submit a proposal or to perform the contract. (Explain why the disclosure of the Government's needs would compromise the national security or violate security requirements.)</p>
14.	<p>41 USC 253(c)(7) – Public Interest</p> <p>This authority may be used when none of the other authorities above apply. Individual justification, Secretarial approval, and Congressional notification 30 days before award of the contract are required.</p>

15. JUSTIFICATION (ADD PAGES IF NEEDED)**A. DEMONSTRATION THAT THE PROPOSED CONTRACTOR'S UNIQUE QUALIFICATIONS OR THE NATURE OF THE ACQUISITION REQUIRES USE OF THE AUTHORITY CITED.**

An in-depth interview was conducted with the prospective outside expert. The prospective outside expert displayed the necessary expertise as a complex commercial litigator experienced in commercial transactions (including transfers of complex economic matters) and provides critical outside expert support needed to evaluate and help prepare the case in anticipation of litigation. He possesses significant litigation experience and the complementary skills offered by staff at the firm, who will work under the direction and supervision of the expert, meet the needs to support the Service. He will be closely involved with the assignment and will be responsible for all work products.

B. DESCRIBE THE EFFORTS TAKEN TO ENSURE OFFERS WERE SOLICITED FROM AS MANY POTENTIAL SOURCES AS IS PRACTICABLE, INCLUDING WHETHER A GPE NOTICE WAS OR WILL BE PUBLISHED AS REQUIRED BY SUBPART 5.2 AND, IF NOT, WHICH EXCEPTION UNDER 5.202 APPLIES.

No GPE notice was issued.

A search of potential outside experts was conducted by the IRS. The prospective expert was identified after considering a number of factors including experience, track record, expertise/skill set, and availability/suitability to represent the government in a high profile case that has a high likelihood of resulting in a dispute and litigation. Other complex litigation experts with the necessary mix of experience and similar skill-sets were also considered and were determined to be unsuitable either because they did not have necessary experience and capabilities or, although the expert had appropriate experience, their practice make potential representation of the Service in a high profile tax case impractical due to potential conflicts of interest. The expert in question was identified and selected as the recommended expert after a Market Survey that determined that the expert had the necessary skills and experience to capably represent the Service if the case goes to litigation and would be able to do so without a conflict of interest. A lengthy interview was conducted to ascertain their expertise, ability to perform the work, if they had the resources necessary to perform the work and if they could meet the timeframes.

C. DEMONSTRATION THAT THE ANTICIPATED COST TO THE GOVERNMENT WILL BE FAIR AND REASONABLE

The hourly rate for the recommended outside expert is in the range of the other outside experts with similar expertise. The proposed outside expert has extensive experience in the complex litigation, including complex economic and tax related matters. The extensive amount of experience the expert possesses will enable him to complete the contract in the most efficient and expedient manner compared to the other potential experts.

D. DESCRIBE THE MARKET SURVEY THAT WAS CONDUCTED AND THE RESULTS OF THAT SURVEY. IF ACTIONS WERE TAKEN BY PROCUREMENT PERSONNEL TO SATISFY THIS REQUIREMENT SUCH AS A GPE SOURCES SOUGHT SYNOPSIS, PLEASE SPECIFY.

See Market Survey form and item B above.

E. DESCRIBE ANY OTHER DOCUMENTATION TO SUPPORT THE JOFOC.

None.

F. LIST SOURCES, IF ANY, THAT EXPRESSED, IN WRITING, AN INTEREST IN THE ACQUISITION

None.

G. LIST THE ACTIONS THE BUREAU WILL TAKE TO PROMOTE THE COMPETITION ON ANY SUBSEQUENT ACQUISITIONS FOR SIMILAR SUPPLIES OR SERVICES

The Service will continue to look for other potential outside experts with the specific skills, expertise, experience and knowledge necessary for this complicated issue. There is a specific expertise/skill set required for the issue in this contract and a small population of qualified experts available.

H. STATEMENT THAT REQUIREMENT DOES NOT RESULT FROM A LACK OF PLANNING OR THE EXPIRATION OF FUNDS.

The subject requirement for outside expert support in this matter was recently identified in the natural development of the case work and is not the result of lack of planning or expiration of funds. The case the outside expert will support is on-going and has developed over time based as the issue has been worked, information gathered, and analysis performed. Having confirmed that the substance of the case is sound and given that the complexities of the case have required the Service to seek additional experts to provide confirmation of the issues the Service believes are relevant before expending more time and resources into the case. The exam team looked at the issues and identified services which could not be performed in house due to a lack of in-house expertise. LB&I and Counsel responsible for supporting the case have planned and worked closely together to arrive at this recommendation for the current cycle.

16. COMPETITION REVIEW BOARD RECOMMENDATION (OPTIONAL)

APPROVE DISAPPROVE

(Name and Title)	(Signature)	(Phone No.)	(Date)
(Name and Title)	(Signature)	(Phone No.)	(Date)

ADDITIONAL APPROVALS

OVER \$650,000	17. BUREAU COMPETITION ADVOCATE (Name & Title)	<input type="checkbox"/> APPROVE	(Signature)	(Phone No.)
		<input type="checkbox"/> DISAPPROVE		(Date)
OVER \$12.5 MILLION	18. BUREAU HEAD OR SENIOR EXECUTIVE SERVICE DESIGNEE (Name & Title)	<input type="checkbox"/> APPROVE	(Signature)	(Phone No.)
		<input type="checkbox"/> DISAPPROVE		(Date)
OVER \$6	19. SENIOR PROCUREMENT	<input type="checkbox"/> APPROVE	(Signature)	(Phone No.)

	EXECUTIVE (Name & <i>Title</i>)	<input type="checkbox"/> DISAPPROVE		(Date)
NOTE: Each review must be preceded by lower level approval(s), e.g., over \$62.5 million all approvals are required. IN NO CASE WILL AN INDIVIDUAL SIGN MORE THAN ONE APPROVAL LEVEL.				

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LB&I:CTM:SEA

date: March 3, 2014

to: Eli Hoory
Transfer Pricing Practice
Large Business & International

from: Ewan Purkiss
Area Counsel (CTM)
Large Business & International

subject: **Microsoft Corporation and Subsidiaries (Tax Years 2004, 2005 and 2006)**

Disclosure Statement

Do not disclose – this writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views. This memorandum may not be cited as precedent.

This advice is not binding on the Service and is not a final case determination. The content is advisory and does not resolve any Service position on an issue or provide the basis for closing a case. The determination of the Service in any case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case. The advice may not be used or cited as precedent.

(b)(5) DP AC



(b)(5) DP AC

Should you have any questions or wish to discuss further, please contact the undersigned at 510-637-2774 or Cathy A. Goodson at 206-220-5567.

Purkiss Ewan D

Digitally signed by Purkiss Ewan D
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Ewan D. Purkiss
Area Counsel (CTM)
Large Business & International

cc: Tom Vidano, Deputy Division Counsel (Int'l)